

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff- Respondent,

Case No. 16-20344

v.

Honorable Thomas L. Ludington

ROBERT RAY CASTILLO,

Defendant-Petitioner.

**ORDER DENYING PETITIONER'S MOTION TO VACATE AND GRANTING
RESPONDENT'S MOTION TO DISMISS**

On May 11, 2016, Petitioner, Robert Ray Castillo, was indicted for aggravated sexual abuse and sexual abuse. ECF No. 12. He pled guilty on December 7, 2016 (ECF No. 36) and was sentenced on September 12, 2017 (ECF Nos. 50, 51). Petitioner did not appeal. On April 29, 2019, Petitioner filed a petition for writ of habeas corpus, arguing he is eligible for relief under 28 U.S.C. § 2255. ECF No. 52. The case was transferred to the Eastern District of Virginia and later transferred back to the Northern Division of the Eastern District of Michigan. *Id.* Respondent, United States of America, filed a motion to dismiss on September 5, 2019 contending that the Petition was untimely filed. ECF No. 56.

I.

The Antiterrorism and Effective Death Penalty Act (AEDPA) sets a one-year statute of limitations for Motions to Vacate under 28 U.S.C. § 2255. Because Petitioner did not appeal, his judgment became final on October 4, 2017. As such, the statute of limitations for a Motion to Vacate closed on October 4, 2018. Petitioner did not file his Motion to Vacate until April 29, 2019 – more than six months after the statute of limitations expired. Accordingly, Petitioner's Motion to Vacate will be denied and Respondent's Motion to Dismiss will be granted.

II.

Having considered the matter, the Court concludes that reasonable jurists would not dispute whether Petitioner's motion to vacate was time-barred. Accordingly, a certificate of appealability is not warranted in this case. The Court further concludes that Petitioner should not be granted leave to proceed *in forma pauperis* on appeal, as any appeal would be frivolous. See Fed. R. App. P. 24(a).

III.

Accordingly, it is **ORDERED** that Petitioner's Motion to Vacate, ECF No. 52, is **DENIED** as untimely.

It is further **ORDERED** that Respondent's Motion to Dismiss, ECF No. 56, is **GRANTED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that leave to proceed in forma pauperis on appeal is **DENIED**.

Dated: September 19, 2019

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Robert Ray Castillo** #54618-039, PETERSBURG MEDIUM FEDERAL CORRECTIONAL INSTITUTION, Inmate Mail/Parcels, P.O. BOX 90043, PETERSBURG, VA 23804 by first class U.S. mail on September 19, 2019.

s/Kelly Winslow
KELLY WINSLOW, Case Manager